

UNITED STATES
v.
JAMES R. AND SAMMY B. RAGSDALE

IBLA 75-350

Decided June 11, 1975,

Appeal from decision of California State Office, Bureau of Land Management, declaring mining claims null and void. CA 2181.

Affirmed.

1. Administrative Procedure: Administrative Procedure Act -- Contests and Protests: Generally -- Mining Claims: Contests

A mining claim is a claim to property which may not be declared invalid except in accordance with due process of law. Due process consists of proper notice and opportunity for an agency hearing in accordance with the Administrative Procedure Act, and it suffices if the claimant is properly notified and afforded the opportunity to be heard. But there is no requirement that a hearing be held where the contestee fails to avail himself of the opportunity for a hearing within the time provided.

2. Mining Claims: Contests

Under the Department of the Interior's rules governing contests against mining claims, where an answer to a complaint is not filed within the prescribed time the allegations of the complaint will be taken as admitted by the contestee and the case decided without a hearing by the appropriate officer of the Bureau of Land Management. The Secretary of the Interior is without authority to waive the rules to permit the late filing of the answer.

APPEARANCES: James R. Ragsdale and Sammy B Ragsdale, each pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

James R. and Sammy B. Ragsdale appeal from the January 17, 1975, decision of the California State Office, Bureau of Land Management (BLM), which declared three placer mining claims null and void. ^{1/} The three claims are located in section 6, T. 45 N., R. 7 W., Mount Diablo Meridian, Siskiyou County, Klamath National Forest, California. At the request of the Forest Service, the California State Office, BLM, issued a contest complaint charging that the claims were invalid: 1) due to lack of discovery of a valuable mineral deposit, 2) the ground on which the claims are located is not mineral in character, and 3) the claims are not held in good faith for mining purposes. The complaint also contained a notice that unless the contestees answered the complaint within thirty days, as required by 43 CFR Part 4, the allegations would be taken as admitted and the case decided without a hearing. A copy of the pertinent regulations in Part 4 was attached to the complaint. Personal service was made on James Ragsdale on November 27, 1974, and on Sammy Ragsdale on December 3, 1974. Thus, it was incumbent upon James Ragsdale to reply by December 27, 1974 and Sammy Ragsdale by January 2, 1975. Appellants' joint answer was received by the California State Office on January 9, 1975. Thus the answer was late as to both. Though the letter is dated December 29, 1974, it was sent by registered mail postmarked January 8, 1975. The California State Office found that appellants' answer was neither sent nor received on time, and appellants have not questioned that finding. The action of the California State Office in taking the allegations of the complaint as admitted and declaring the claims null and void is clearly correct.

[1] In a similar case, United States v. Weiss, 15 IBLA 198 (1974), we stated that:

A mining claim is a claim to property which may not be declared invalid without proper notice and an adequate opportunity for an agency hearing in accordance with due process of law. Administrative Procedure Act, 5 U.S.C. § 554 (1970); United States v. O'Leary, 63 I.D. 341 (1956). Due process consists of notice and opportunity for hearing, and it suffices if the claimant is afforded the opportunity to be present and heard. United States v. McCall, 1 IBLA 115 (1970). But there is no requirement that a

^{1/} The three claims are the Timber Gulch Placer Mining Claim a/k/a Timber Gulch a/k/a Timber Line Gulch; Timber Gulch No. 2 Placer Mining Claim a/k/a Timber Line Gulch; and Timber Gulch Relocation Placer Mining Claim.

hearing be held where the contestee has been given due notice in the form of an adequate contest complaint, properly served, and fails thereafter to avail himself of the opportunity for a hearing within the time provided. United States v. Garnett, A-28545 (January 31, 1961). The requirement for the timely filing of an answer to a contest complaint is mandatory in nature and jurisdictional in character. (Emphasis in original.)

15 IBLA at 207.

[2] It is a long standing rule that the Secretary of the Interior is without authority to waive his own regulations 2/ to permit late filing of answers to contest complaints; the allegations must be taken as admitted and the claims declared null and void. United States v. Sainberg, 5 IBLA 270 (1972), aff'd sub nom., Sainberg v. Morton, 363 F. Supp. 1259 (D. Ariz. 1973). As the District Court stated in affirming the Department's position:

The Secretary's rules are reasonable in giving a period of thirty days in which to file an answer. In order to carry out an orderly system of justice the Secretary has not established a grace period or retained discretion in the application of the regulation. Plaintiffs ask this Court to require the Secretary to waive his own mandatory regulation because the answer was filed one day late as a "result of mistake, inadvertence and excusable neglect." Nowhere in the regulations is the authority given the Secretary to waive his regulations

2/ The pertinent regulations are 43 CFR 4.450-6, 4.450-7 and 4.451-2:

§ 4.450-6 Answer to complaint.

Within 30 days after service of the complaint or after the last publication of the notice, the contestee must file in the office where the contest is pending an answer specifically meeting and responding to the allegations of the complaint, together with proof of service of a copy of the answer upon a contestant as provided in § 4.450-5(b)(3). The answer shall contain or be accompanied by the address to which all notices or other papers shall be sent for service upon contestee.

§ 4.450-7 Action by Manager.

(a) If an answer is not filed as required, the allegations of the complaint will be taken as admitted by the contestee and the Manager will decide the case without a hearing.

(b) If an answer is filed and unless all parties waive a hearing, the Manager will refer the case to an administrative law judge upon determining that the elements of a private contest appear to have been established.

§ 4.451-2 Proceedings in Government contests.

The proceedings in Government contests shall be governed by the rules relating to proceedings in private contests * * *.

because of excusable neglect or mistake. The defendant is required to abide by his own regulations, so are plaintiffs. If the time requirement was waived this would disturb the Secretary's long-standing procedure of administering the mining laws and other land laws fairly. The regulations would be a farce if they could be applied only if and when the parties felt like complying therewith.

363 F. Supp. at 1263.

See also United States v. Weiss, 431 F.2d 1402, 1406 (10th Cir. 1970); United States v. Honeycutt, 15 IBLA 184 (1974); United States v. McCormick, 5 IBLA 382, 79 I.D. 155 (1972).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Frederick Fishman
Administrative Judge

